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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/718,505	11/20/2003	Ronald D. McCallister	125.136USR1	1245
34206	7590	05/29/2009	EXAMINER	
FOGG & POWERS LLC 5810 W 78TH STREET SUITE 100 MINNEAPOLIS, MN 55439				CORRIELUS, JEAN B
ART UNIT		PAPER NUMBER		
2611				
			NOTIFICATION DATE	DELIVERY MODE
			05/29/2009	ELECTRONIC

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

Notice of the Office communication was sent electronically on above-indicated "Notification Date" to the following e-mail address(es):

DAVID@FOGLAW.COM

UNITED STATES PATENT AND TRADEMARK OFFICE

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BEFORE THE BOARD OF PATENT APPEALS  
AND INTERFERENCES

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*Ex parte:* RONALD D. MCCALLISTER, BRUCE A. COCHRAN, and  
BRADLEY P. BADKE

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Application Number 10/718,505  
United States Patent 6,366,619  
Technology Center 2600

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Mailed: May 29, 2009

Before Lynn M. Kryza, *Deputy Chief Trial Administrator*

ORDER RETURNING UNDOCKETED APPEAL TO EXAMINER

This reissue application was electronically received by the Board of Patent Appeals and Interferences on March 12, 2009. A review of the application revealed that it is not ready for docketing as an appeal. Accordingly, the application is herewith being returned to the Examiner to address the following matter(s) requiring attention prior to docketing.

APPEAL BRIEF, CLAIMS APPENDIX

A review of the Appeal Brief filed September 25, 2008 reveals that the Claims Appendix of the Appeal Brief is not in proper format. The copy of the claims should be in proper format and must contain markings such as brackets or underlining in accordance with 37 CFR 1.173(d). *See also Manual of Patent Examining Procedure (MPEP) § 1454 (8<sup>th</sup> ed. Rev. 6, Sept. 2007)* (“The claims on appeal presented in an appeal brief for a reissue application should include all underlining and bracketing necessary to reflect the changes made to the patent claims during the prosecution of the reissue application. In addition, any new claims added in the reissue application should be completely underlined”).

AMENDMENTS, SUPPLEMENTAL DECLARATION

The Amendments dated November 1, 2004, September 28, 2005, November 18, 2005, May 18, 2006, June 11, 2007, and March 25, 2008 do not appear to have been accompanied by a supplemental reissue declaration. Whenever claims are amended or added, a supplemental reissue declaration is required pursuant to MPEP 1414.01. Form PTO/SB/51S, “Supplemental Declaration For Reissue Patent Application To Correct ‘Errors’ Statement ([see] 37 C.F.R. § 1.175(b)(1)),” may be used to prepare a supplemental reissue declaration. Form PTO/SB/51S serves to indicate that every error in

the patent that was corrected in the reissue application, but was not covered by a prior reissue oath/declaration submitted in the reissue application, arose without any deceptive intention on the part of the applicant.

It does not appear that the Examiner has included in an Office action the appropriate rejection of all the reissue claims under 35 U.S.C. 251, as being based upon a defective reissue declaration, and the requirement of a supplemental reissue declaration signed by the reissue applicant to overcome such rejection.

### CONCLUSION

Accordingly, it is ORDERED that the reexamination proceeding is returned to the Examiner for:

- 1.) making the appropriate rejection of all the reissue claims under 35 U.S.C. 251, as being based upon a defective reissue declaration;
- 2.) requiring submission of a proper supplemental reissue declaration to overcome the rejection of all the reissue claims under 35 U.S.C. 251, as being based upon a defective reissue declaration;

3.) requiring a corrected Claim Appendix in compliance with 37 CFR 1.173;

4.) for such other action as may be appropriate.

If there are any questions pertaining to this Order, please contact the Board of Patent Appeals and Interferences at 571-272-9797.

LK/ACK

cc:

FOGG & POWERS LLC  
5810 W 78TH STREET  
SUITE 100  
MINNEAPOLIS MN 55439